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File No. O Refugees 51

Legal Department
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Subject:— Opinions under the Bombay Refugees Act, 1948

File No. O Refugees/51

C O N T E N T S.

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Bombay Refugees Act, 1948, Sections 7 & 8.

Constitution of India, Articles 14 & 19.

The question raised for the F.L.A.'s consideration is whether section 7 of the Bombay Refugees Act, 1948, is invalid in view of the provisions of the Constitution of India. Section 7 of the Bombay Refugees Act, 1948, provides:

"The Provincial Government may, by order in writing direct any refugee or class of refugees to reside in any camp or place or within any area or to leave any camp or place or area and go to and reside in any other camp or place or area in the Province of Bombay within a period specified in the order."

This provision is likely to be attacked as invalid on the ground that it contravenes article 14 and article 19(1)(d) and (e) of the Constitution of India. Article 14 provides for equality before the law and the equal protection of the laws to all persons within the territory of India. Sub-clauses (d) and (e) of article 19(1) guarantee all citizens the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. This right is subject to the limitation contained in clause (5) which provides that nothing in sub-clauses (d) and (e) shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. The contention that the Bombay Refugees Act denies equal protection of the laws or the equality before law is not tenable. The Fourteenth Amendment of the Constitution of the United States guarantees a similar right of equal protection of the laws. In Barbier v. Connolly (113 U.S. 27, 3132) it

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was held:

"Provisions though special in their character do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation discriminating against some and favouring others is prohibited. But legislation which, in carrying out a public purpose is limited in its application if within the sphere of its application it affects alike all persons similarly situated is not within the amendment." In other words, as stated by Willis on Constitutional Law at p. 579, "The guarantee of equal protection of the laws means the protection of equal laws. It forbids class legislation but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under the like circumstances and conditions both in the privileges conferred and in the liabilities imposed. The inhibition of the amendment was designed to prevent any person or class of persons being singled out as a special subject for discriminating enforced by legislation." The Bombay Refugees Act is an emergency legislation passed by the Bombay State to provide for the registration and regulation of the movement of refugees with a view to facilitating their relief and rehabilitation and securing public health, sanitation and safety and for certain other purposes. The Act makes no discrimination between the refugees. The provisions of the Act apply alike to all those who are refugees and have entered the Bombay State. Consequently, it appears that this act does not violate the provisions of article 14 of the Constitution of India.

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2. It is true that section 7 of the Bombay Refugees Act gives power to Government to order the refugees to reside in particular camps or places or areas and to remove themselves from such camps, places or areas. But this power is taken in the interests of the general public and for the protection of the interests of the refugees. This power to restrict the movements of the refugees is not intended to impose unreasonable restrictions on their movements but is intended to facilitate their relief and rehabilitation and for securing public health, sanitation and safety. If a certain camp is over crowded or is found unsuitable, it would certainly be necessary for Government to remove all or any of the refugees from such camp and order them to reside in some other camp. In the circumstances, it appears that section 7 of the Bombay Refugees Act wouldnot be in violation of article 19(1)(d) and(e) of the Constitution of India as those restrictions appear to be necessary in the interests of the administration of the Act itself for the rehabilitation of the refugees.

Id/- J.R.DHURANDHAR.

Additional Secretary to Government.

U.R. to R.H.D. No.3020, dated the 17th February 1951.

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The question raised for R.L.A.'s consideration is whether section 7 of the Bombay Refugees Act, 1948 can be resorted to evict displaced persons from the camp on any of the following grounds:-

(1) unauthorized occupation;

(2) breach of peace as a result of undesirable activities;

(1) Non-payment of rent-

Section 7 of the Bombay Refugees Act, 1948 provides,

" The State Government may, by order in writing, direct any refugee or class of refugees to reside in any camp or place or within any area or to leave any camp or place or area and go to and reside in any other camp or place or area in the State of Bombay within a period specified in such order."

Section 8 provides -

" If any refugee fails to leave any camp, place or area, in accordance with an order made under section 7, he may be removed by any police officer or any person authorised by the State Government in this behalf from such camp, place or area in such manner as may be specified by the State Government by general or special order. Nothing in this section shall affect the liability of such refugee to the penalty provided in section 10".

In Criminal Application No. 741 of 1950 the aforesaid provisions were considered by the Bombay High Court. It was held "Section 7 does not contemplate that the Collector should order a refugee to leave a particular camp and then give him liberty to reside anywhere also in the State of Bombay. That liberty the refugee does not require, he has that under the general law of the land. But what the scheme of section 7 seems to be is that so long as a refugee

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wishes to avail himself of the facilities provided by the State for the refugees, he must stay at a particular camp and if he is asked to leave that camp then he must stay at some other camp or place indicated in the order. But the fact that the order made by the Collector may not be within the scope of section 7 does not entitle the petitioner to challenge that order unless he satisfied us that he has some right which has been contravened by this order, and therefore going back to the question which we raised at the very beginning of this judgment, has the petitioner any right under the Bombay Refugees Act to reside in any particular refgee camp?

We see no right in any of the provisions of that Act, nor do we find any legal obligations undertaken by Government to provide evey refugee in this State with a camp or a place where he may reside and have the necessary comforts and convenience. If there is no right in the petitioner and if there is no obligation undertaken by the State, then it is difficult to understand how the petitioner can insist upon living in the refugee camp at Harni and challenging of the order which asks him to leave that camp. "Since a refugee has no right to reside in a camp and if such refugee indulges in undesirable activities threatening breach of peace he would certainly be considered as one not deserving the facilities afforded by Government. It would therefore be competent to withdraw the facilities and to order such refugee to leave the camp and in case of his refusal, to take action as provided in section 8. So far as refugees who unauthorizedly occupy the camp are concerned, it appears that there would also be no objection to take action under section 7 and direct them to leave the camp for these persons being trespassers and not lawfully given proper shelter in the camp cannot be entitled to the

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facilities provided therein. If such refugees on being ordered to leave camp refuse to obey, action can be taken against them under section 8. So far as refugees who are in arrears of rent are concerned it appears that action under section 7 would not be proper for by accepting rent from them a kind of relationship of landlord and tenant is created between the Government and the refugees who occupy camp on payment of rent. As advised by the R.L.A. in his opinion No. 1898, dated the 31st January 1951 it would be desirable to evict through a Civil Court such refugees who are in arrears of rent.

Id/- B. D. MIRCHANDANI.
Additional Secretary to Government.

W.R. to R.H.D. No.13972, dated the 30th August 1951.

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Validity of section 7 of the Bombay Refugees Act 1948.

In its judgment in Criminal Application No.779 of 1951 (with criminal applications Nos.780, 781 and 782 of 1951), the High Court, following its own decision in Emperor v. Jeshingbhai, 52 Bom.L.R.544, has held that section 7 of the Bombay Refugees Act, 1948, is invalid in so far as it permits an order to be passed against a refugee calling upon him to leave any area or place other than the refugee colony constituted by Government on the ground that the section does not provide for communication of reasons of the order to the refugee and an opportunity to be heard. The High Court has not questioned the validity of the section so far as power to extern from the camps constituted by Government is concerned and this decision is in conformity with the previous decision of the High Court in Criminal Application No.741 of 1950. It is clear therefore that this power of externing from the camps can be validly exercised by Government and the Collectors and it will not benecessary to supply reasons to the refugee or to provide him an opportunity to be heard before such an order is passed. Asregards the other power viz. of externing from other places, the power cannot be exercised so long as the decision of the Bombay High Court that the section is invalid stands. The High Court's reasoning in Emp. vs. Jeshingbhai has not been accepted as correct by Government and three cases are at present pending in the Supreme Court where that reasoning is being challenged. If the Supreme Court gives a decision in favour of Government the position will have to be reviewed.

Id/- J.R.DHURANDHAR.

Remembrancer of Legal Affairs.

U.R. to Reh.Deptt.,No.929-Confl., dated the 6th November 1951.

RHB.27.6.